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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,520	02/14/2001	Geraldine Lerebour	2365-28	7537
23117	7590	02/23/2005	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			KIM, JENNIFER M	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/782,520

Applicant(s)

LEREBOUR ET AL.

Examiner

Jennifer Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 13-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 13-27, drawn to a method of reducing the adhesion of microorganisms to the surface of the skin and/or the mucous membranes without requiring the presence of antibiotic, bactericidal or fungicidal agents, classified in class 424, subclass 401.
- II. Claims 28-36, drawn to a method of reducing the incidence of folliculitis without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- III. Claims 28-36, drawn to a method of reducing the incidence of red blotches without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.

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- IV Claims 28-36, drawn to a method of reducing the incidence of spots without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- V Claims 28-36, drawn to a method of reducing the incidence of pruritis without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- VI Claims 28-36, drawn to a method of reducing the incidence of aphtha without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- VII Claims 28-36, drawn to a method of reducing the incidence of impetigo without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty

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substance free of carbohydrate units, classified in class 514, subclass 558+.

- VIII Claims 28-36, drawn to a method of reducing the incidence of mycosis without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- IX Claims 28-36, drawn to a method of reducing the incidence of acne without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- X Claims 28-36, drawn to a method of reducing the incidence of comedones without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.
- XI Claims 28-36, drawn to a method of reducing the incidence of dandruff without requiring the presence of antibiotic, bactericidal or fungicidal

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agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.

- XII Claims 28-36, drawn to a method of reducing the incidence of furnuncles without requiring the presence of antibiotic, bactericidal or fungicidal agents comprising as an active ingredient, in a cosmetic composition or pharmaceutical composition, an effective quantity of at least one fatty substance free of carbohydrate units, classified in class 514, subclass 558+.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and II-XII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation since Group I is related to the method of reducing the adhesion of microorganisms to the surface of the skin and Groups II-XII are related to reducing the incidence of developing various skin conditions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art, the searches are separate and not coextensive and burdensome to the examiner especially required non-patent literature search.

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Moreover, they have established different classification because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Inventions Group II and III-XII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions each of distinct inventions have different effects since each of separate and distinct skin disorders have different etiology and different known treatment. For example, the skin disorder, impetigo is completely different than spots or purities since impetigo is a contagious pyoderma caused by direct inoculation of group A streptococci or staphylococcus aureus into superficial cutaneous abrasions, most commonly seen in children and pruritis can be caused by any of various conditions e.g. contact dermatitis; spots can be caused by numerous conditions such as drug allergies or age related skin conditions. e.g. age spots and it can be seen any ages. Each of different unrelated skin conditions have different known treatment, e.g. impetigo is can be treated with Mupirocin (BACTROBAN) ointment applied 3 times a day to affected areas; dermatitis can be treated be topical steroids; age spots can be treated with Retinol-Vitamin A Cream.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, and since the search required for Group II is not required for Groups III-XII extreme burden would place on the Examiner to search unrelated inventions involving

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consideration of vast array of etiology, treatment, mechanism and pathways involved in each disorders, restriction for examination purposes as indicated is proper.

If Applicants elect a single Group from Groups II-XII, following election of species is required:

This application contains claims directed to the following patentably distinct species of the claimed invention: a fatty substance free of carbohydrate units.

Applicants are required under 35 U.S.C. 121 to elect a single ultimate fatty substance for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, an active ingredient is generic.

Applicants are advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicants traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sreenivasan Padmanabhan
Supervisory Examiner
Art Unit 1617

Jmk
February 14, 2005